

**UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE**

***Office of Business Liaison***

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**GENERAL**

The O category is reserved for aliens of extraordinary ability in the sciences, arts, education, business, or athletics (O-1), along with family members (O-3) and aliens accompanying or assisting O-1 performers or athletes (O-2). To qualify for O-1 classification, and therefore to support classification of O-2 and O-3 accompanying aliens, the O-1 alien must be coming to the United States (US) to work in his or her area of extraordinary ability or achievement<sup>1</sup>.

**ANNUAL CAP**

There is no maximum number of O nonimmigrants who may be admitted annually to the United States (US).

**WHO MAY FILE**

A US employer or agent may file a petition for one or more O beneficiaries. US agents must be used where the O beneficiary is self-employed<sup>2</sup>, where numerous US employers<sup>3</sup> are involved in an itinerary covering multiple performances or engagements<sup>4</sup>, and/or where the O alien will perform services in the US for a foreign employer<sup>5</sup>.

**PROCESS FOR DESIGNATION OF AN O NONIMMIGRANT**

O petitions will be granted to cover specific services at identified workplaces or events<sup>6</sup>. Three steps are involved:

1. O-1 and O-2 petitions require written advisory opinions from a peer group<sup>7</sup>, labor organization, or management organization<sup>8</sup>;
2. An O petition on Form I-129, including the O supplement, required supporting documentation<sup>9</sup> including the advisory opinion, and a fee of \$110, must be filed no more than 6 months prior to the date of need with the INS Service Center with jurisdiction over the geographical area where the O beneficiary will work or, for petitions involving multiple worksites, where the agent is located. Only one O-1 beneficiary may be included in a petition. A separate petition is required for one or more O-2 aliens required by an O-1 performer or athlete.
3. O visa must be approved by a US consulate abroad based on the petition approved by INS (except Canadians).

<sup>1</sup> The event or position at or in which the O-1 alien will perform need not require as high a level of ability or achievement as the alien must possess (e.g., an operatic diva may come to the US to sing in the opera chorus).

<sup>2</sup> A contract between the agent and alien, specifying wages, terms, and conditions, is required.

<sup>3</sup> Alternatively, each individual employer must petition independently for the O alien(s). Where an O-1 nonimmigrant will perform services for more than one US employer concurrently, each concurrent employer must file a separate petition.

<sup>4</sup> A specific and complete itinerary of services, engagements, etc., is required, as well as contracts between the alien and each employer.

<sup>5</sup> The foreign employer must have authorized the agent to file the petition and to accept service of process on its behalf in the US. The foreign employer will also be liable, through the agent, for compliance with employment eligibility verification requirements.

<sup>6</sup> An alien will not be granted O-1 classification to freelance in the US.

<sup>7</sup> For this purpose, *peer group* means a person with expertise in the alien's field or group/organization composed of practitioners of the alien's occupation. A collective bargaining representative of the petitioning employer's employees may qualify. INS maintains a non-exhaustive list of groups and organizations that have agreed to provide advisory opinions, as well as a list of occupations and fields where the nonexistence of an appropriate consulting entity has been verified.

<sup>8</sup> If the advisory opinion is not favorable to the petitioner, it must include a specific statement of facts that support its conclusion. In the case of an alien coming to the US to perform services in the arts, entertainment, or athletics, who requires expedited approval, the INS Service Center will contact the appropriate peer organization and request an advisory opinion if one is not submitted by the petitioner. In cases where the petitioner establishes that an appropriate peer group does not exist, the Service Center will adjudicate based on other evidence submitted.

<sup>9</sup> Legible photocopies of documents may be submitted in lieu of originals.

## STANDARDS FOR O-1 CLASSIFICATION

### Aliens in the sciences, education, business, and athletics

To qualify, an alien must demonstrate either of the following:

- receipt of a major, internationally-recognized award (e.g. the Nobel Prize), or
- at least three of the following apply to him/her:

- receipt of nationally or internationally recognized prizes or awards for excellence in his/her field
- membership in an association in the field which requires outstanding achievements of its members, as judged by national or international experts in its field
- published material in professional or major trade publications or major media about the alien, concerning the alien's work in the field<sup>10</sup>
- participation on a panel, or individually, as a judge of the work of others in the field
- scientific, scholarly, or business-related contributions of major significance in the field
- authorship of scholarly articles in the field in professional journals or other major media
- employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation
- high salary or other remuneration commanded by the alien for services<sup>11</sup>
- other comparable evidence

### Aliens<sup>12</sup> in the arts<sup>13</sup>

To qualify, an alien must demonstrate either of the following:

- nomination for and/or recipient of significant national or international awards or prizes in his or her field (e.g. Academy, Emmy, Grammy, or Director's Guild Award), or
- at least three of the following apply to him/her:

- performed (or will perform) a lead or starring role in productions or events of distinguished reputation<sup>14</sup>
- achieved national or international recognition for achievements<sup>15</sup>
- performed a lead, starring or critical role for organizations and establishments of distinguished reputation<sup>16</sup>
- a record of major commercial or critically acclaimed success<sup>17</sup>
- received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the alien's field<sup>18</sup>
- commands high salary or other remuneration<sup>19</sup> for services as compared to others in the alien's field
- other comparable evidence

### Aliens in the motion picture or TV industry

An alien of extraordinary achievement in the field of motion pictures or television must meet a higher standard than an alien of extraordinary ability in the arts.<sup>20</sup> The same standards apply, but may be weighted differently.

<sup>10</sup> The title, date, author, and translation( if necessary) of the published material must be included in the petition.

<sup>11</sup> Evidence may include contracts or other reliable documentation.

<sup>12</sup> Qualifying aliens are not restricted to principal creators and performers. Essential persons such as directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, and animal trainers may also qualify.

<sup>13</sup> "Arts" include any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

<sup>14</sup> Can be evidenced by critical reviews, advertisements, publicity releases, publication contracts, or endorsements.

<sup>15</sup> Can be evidenced by critical reviews or other published materials by or about the alien in major newspapers, trade journals, magazines, or other publications.

<sup>16</sup> This can be evidenced by articles in newspapers, trade journals, publications, or testimonials.

<sup>17</sup> This can be evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or TV ratings, and other occupational achievements reported in trade journals, major newspapers, etc.

<sup>18</sup> Qualifying testimonials must indicate the author's authority, expertise, and knowledge of alien's achievements.

<sup>19</sup> Although high salary or remuneration may be established to qualify an alien for O-1 classification, the fact that some services may be performed with low salary or remuneration, or services performed gratis, does not, in and of itself, disqualify an alien for this classification.

## STANDARDS FOR O-2 CLASSIFICATION

The O-2 classification is for aliens who perform essential support to an O-1 *artist or athlete only*. O-2 aliens may not accompany O-1 aliens in the fields of science, business, or education. O-2 classification prohibits an alien from working in the US separate and apart from the O-1 principal. To qualify for classification as an alien who will accompany or assist an O-1 alien, the petition must demonstrate the following:

- the O-2 alien has an integral role in the O-1's performance, i.e., provides direct support to the O-1 principal, and
- has critical skills and experience with the O-1 alien that provide continuity to the performance, engagement, or production of the O-1 principal, are not general, and could not be performed by one or more US workers

### DISTINCTIONS BETWEEN THE O-1 AND O-2 CLASSIFICATIONS

- Unlike O-1 aliens, O-2 aliens must demonstrate nonimmigrant intent, including that they have foreign residence they do not intend to abandon. O-1 aliens may have *dual intent*, meaning that they may be admitted to the US to work temporarily but are permitted to have petitions pending during that time for permanent residence.
- Generally, aliens who qualify for O-1 classification will also meet the standards for employment-based permanent residence in the US under the first preference<sup>21</sup>.

### O-3 DEPENDENTS

O-3 spouses and minor children who derive status from O-1 or O-2 principal aliens may not be employed in the US.

### DURATION OF STAY

There is no limitation on the duration of stay in the US of an O nonimmigrant. An initial period of stay is typically approved for the time necessary to complete the activities or events<sup>22</sup> described in the petition, up to a maximum of three years<sup>23</sup>. O-2 aliens will be admitted for the period of time necessary for them to assist the O-1 principal. O-3 aliens may stay for the same duration as the O-1 or O-2 principals from whom they derive status.

### EXTENSION OF STAY

O nonimmigrants may be granted extensions of stay for up to one year to continue or complete activities for which they were admitted. Extensions must be requested by petitioners both to extend an alien's stay in the US to complete the activities described in the original petition and to extend the original petition where it did not include certain engagements. A separate determination will be made on each type of extension. Petition extensions to cover additional performances or engagements must merit the services of an O-1 caliber individual.

### ADDITIONAL EMPLOYER OBLIGATION

Employers must pay for the return trip abroad<sup>24</sup> of O employees whose employment they terminate prior to the end of the approved period of employment.

### CHANGE OF EMPLOYER

If an O-1 or O-2 alien in the US seeks to change employers<sup>25</sup>, the new employer must file a new petition and request an extension of the alien's stay with the INS Service Center having jurisdiction over the new place of employment.

**Note:** An O-2 alien may change employers only in conjunction with a change of employment by the O-1 principal.

### AMENDED PETITIONS

Material changes in an O-1's eligibility or approved employment require the O-1 petition to be amended..

**Note:** A petitioner may add additional performances or engagements for an O-1 artist or entertainer during the validity period of the petition without filing an amended petition, provided that the additional performances or engagements require O-1 caliber services.

<sup>20</sup> For example, a showing that the alien is *prominent* in his or her field will not necessarily qualify under the *extraordinary achievement* standard. However, an alien who meets the *extraordinary achievement* standard need not necessarily be prominent or have risen to the top of his or her profession, organization, chain of command, etc.

<sup>21</sup> See Employer Bulletin 99-14 regarding Employment-Based Permanent Residence.

<sup>22</sup> Events may consist of scientific projects, conferences, conventions, lecture series, tours, exhibits, business projects, academic semesters, performance seasons, engagements, etc., and may consist of a group of related activities. The period of an event or events may include short vacations, promotional appearances, and stopovers that are incidental to the main event, as well as periods of inactivity between events.

<sup>23</sup> O nonimmigrants may be admitted 10 days before the period of validity listed on the INS approval notice (Form I-797) begins and remain for 10 days after it ends, provided that these periods are included on the I-94.

<sup>24</sup> In this context, "abroad" refers to the alien's last place of residence prior to entry into the US.

<sup>25</sup> A traded professional O-1 athlete traded from one organization to another may commence services for the new organization prior to INS approval of the new organization's petition, provided that the new petition is filed within 30 days.